

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B05
PLR-106488-15

Date:
April 07, 2015

LEGEND:

City =

State =

Department =

Bonds =

a =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 8328 (Carryforward Election of

Unused Private Activity Bond Volume Cap) to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a of unused private activity bond volume cap.

Facts and Representations

City is a political subdivision of State and regularly issues exempt facility bonds for qualified residential rental projects as defined in § 142(d). Department administers the system established by State to allocate State's private activity bond volume cap pursuant to § 146(e). City regularly receives allocation of volume cap under § 146 from Department.

On Date 1, Department awarded to City a carryforward allocation of State's unused private activity bond volume cap from Year 1 in the amount of \$a to apply towards issuing § 142(d) bonds. City failed to file a Form 8328 with the Internal Revenue Service ("Service") for the Year 1 carryforward allocation. City discovered this failure as it was preparing to issue the Bonds, which were issued on Date 2.

Unlike past carryforward allocations, the Year 1 carryforward allocation was not related to a specific City project. Therefore, City did not have a financial advisor, bond counsel, or underwriter in place to assist City with administering the carryforward allocation. In addition, City has not been able to locate a copy of the original letter from Department that would have provided City with instructions related to filing the Form 8328. The City finally received a copy of this letter from Department, but this subsequent letter was not addressed to the City's Director of Finance, who is the party at City responsible for ensuring appropriate and timely filings to the Service.

City was expecting to use the Year 1 carryforward allocation for the Bonds but could not do so because of its failure to file Form 8328. City instead used an allocation of volume cap from Year 2 for the Bonds. City requests this extension of time under § 301.9100-1 to file Form 8328 with respect to the Year 1 carryforward allocation in order to use such allocation for bonds to be issued in the future by City.

This request was filed on Date 3, promptly after discovery of the failure to timely file the Form 8328. As of Date 3, the IRS had not discovered City's failure to timely file the Form 8328.

Law and Analysis

Section 146(f)(1) provides that if an issuing authority's volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued during the calendar year (by the authority), the authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes.

The election is made by filing Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201. Under Notice 89-12, 1989-1 C.B. 633, Form 8328 must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election. While Revenue Procedure 2005-30, 2005-1 C.B. 1148, provides for an automatic extension of six months from the due date of the carryforward election to make the carryforward election, it does not apply in this case.

The election must identify the purpose for which the carryforward is elected, and specify the amount to be carried forward for that purpose. Section 146(f)(2). Carryforward elections (and any identifications or specifications stated therein) are irrevocable. Section 146(f)(4).

Section 301.9100-1 of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2, must be made under the rules of § 301.9100-3. Requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, that the taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer requested relief under that section before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

Conclusion

Under the facts and circumstances of this case, we conclude that City acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file Form 8328 to carry forward \$a of unused volume cap awarded to City on Date 1 will not prejudice the interests of the government. City is granted an extension of time to 45

days from the date of this letter ruling to file the Form 8328 to carry forward the \$a of unused volume cap.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to City's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by City and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

By: /S/
James Polfer
Chief, Branch 5